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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,924	08/23/2001	Horst Clauberg	71348	1406

7590 11/03/2003
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EXAMINER

FULLER, RODNEY EVAN

ART UNIT	PAPER NUMBER
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2851

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,924

Applicant(s)

CLAUBERG ET AL.

Examiner

Rodney E Fuller

Art Unit

2851

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Remarks

In response to applicant's Amendment, dated August 18, 2003, the examiner acknowledges the cancellation of claims 2 and 19. Claims 1, 3-18 and 20-24 are pending.

The examiner acknowledges the corrections of the objections related to the Specification (i.e., abstract) set forth in the Office Action mailed May 28, 2003,

In response to applicant's argument that Ringlien includes additional structure not required by applicant's invention, it must be noted that Ringlien discloses the invention as claimed. The fact that it discloses additional structure not claimed is irrelevant. Thus, the examiner has considered the applicant's arguments in light of the amended claims and maintains the rejections set forth in the Office Action mailed May 28, 2003.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 16-18 and 20-23 rejected under 35 U.S.C. 102(e) as being anticipated by Ringlien (US 6,067,155).

On page 2, lines 7-8, the applicant notes that Ringlien "discloses a near infrared inspection device for transparent glass containers." The examiner notes that Ringlien

discloses (column 5, lines 47-48) an inspection technique for both clear and colored glass. (Emphasis added)

Hence, regarding claim 16, Ringlien discloses “a near infrared radiation source (Fig. 1, ref.# 18; column 2, line 15) positioned to emit radiation having a wavelength of between about 700nm to about 2000nm (column 3, lines 2-3) at a colored article (column 5, lines 47-48); and a detector (Fig. 1, ref.# 28) positioned to measure the near infrared radiation returned from or passed through said colored article.”

Regarding claim 17, Ringlien discloses “processing unit (Fig. 1, ref.# 30) capable of providing an image or process control data.”

Regarding claim 18, Ringlien discloses “wherein said radiation source is selected from the group consisting of incandescent lamps, quartz lamps, halogen lamps, arc lamps, metal oxide lamps, light emitting diodes and lasers.” (Fig. 1, ref.# 18)

Regarding claim 19, Ringlien discloses “wherein said radiation source emits radiation between about 700 nm to about 2000 nm.” (Column 3, lines 3-4)

Regarding claim 20, Ringlien discloses “wherein said radiation source emits radiation between about and preferably from about 700 nm to about 1100 nm.” (Column 3, lines 3-4)

Regarding claim 21, Ringlien discloses “wherein said detectors is selected from the group consisting of electronic photodetectors, thermal detectors, linear detector arrays and electronic cameras with wavelength sensitivity in the near infrared.” (Column 3, line 10)

Regarding claim 22, Ringlien discloses “optical filters that block visible wavelengths but transmits near infrared wavelengths and are used with the radiation source, detector or both.” (Fig. 1, ref.# 32)

Regarding claim 23, Ringlien discloses “wherein said process control data is used to control a process for forming or handling said article.” (Fig. 1, ref.# 30)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringlien (US 6,067,155) in view of Plester, et al. (US 5,067,616).

Ringlien discloses all the structure set forth in the claim (See 35 U.S.C. 102(e) Rejection above), except wherein the item being exposed is a “plastic” article. However, container inspection systems and methods routinely test both glass and plastic containers. (See Plester, column 1, line 17). Thus, it would have been obvious to the ordinary artisan to utilize the apparatus and methods set forth in Ringlien to evaluate “a plastic colored article.” The ordinary artisan would have been motivated to utilize the apparatus set forth in Ringlien to evaluate “plastic” containers, since plastic materials tend to absorb a variety of organic compounds and there is a need to detect containers that may have absorbed contaminants (See Plester, column 1, lines 35-42).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney E Fuller whose telephone number is 703-306-5641. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Russ Adams can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

Rodney E Fuller
Primary Examiner
Art Unit 2851

